HIGH COURT OF CHHATTISGARH AT BILASPUR

Single Bench : Hon'ble Shri Dilip Raosaheb Deshmukh, J.

Civil Revision No.145 of 2007

APPLICANTS

1. Hemlata Dwivedi, aged about 70 years, Wd/o Late Babulal Dwivedi,
2. Shailendra Dwivedi, aged about 35 years, S/o Late Babulal Dwivedi,
3. Smt. Umeshwari Dwivedi, aged about 33 years, W/o Shri Shailendra Dwivedi,
4. Manoj Kumar, aged about 33 years, S/o Late Babulal Dwivedi,
   All R/o Rajendra Nagar, Bilaspur, Tahsil and District Bilaspur (C.G.)
5. Smt. Shalini Pandey, aged about 35 years, Wd/o Late Ashwani Pandey, R/o Post Puran, Tahsil Mungeli, District Bilaspur (C.G.) (Defendants)

Versus

RESPONDENT

Satyendra Dwivedi, aged about 46 years, S/o Late Babulal Dwivedi, R/o Tiwari Chal, Jarahabhata, Bilaspur Town, Tahsil and District Bilaspur (C.G.) (Plaintiff)

Civil Revision under Section 115 of the C.P.C.,1908

Present :

Shri Anant Bajpai, counsel for the applicants.

ORAL ORDER

(Passed on 3rd December, 2007)

This Civil Revision is being disposed of at the stage of admission without notice to the respondent/non-applicant.

2. Heard.

3. The applicants are aggrieved by an order dated 31-08-2007 whereby the application filed by the applicants/defendants under Order

19

7 Rule 11 of C.P.C. read with Section 151 of C.P.C. was dismissed only on the ground that question necessary for adjudication was a matter of evidence. The law is well settled that while dealing with an application under Order 7 Rule 11 of C.P.C. on the ground that the suit was not maintainable, the averments averments in the plaint alone have to be considered.

4. The trial Court ought to have considered the averments in the plaint on its face value and decided the application under Order 7 Rule 11 of CPC on merit. The approach of the trial Court in rejecting the application under Order 7 Rule 11 of CPC on the ground that evidence would be required to be adduced by the parties and on this basis fixing the matter for filing of written statement was wholly erroneous.

5. In this view of the matter, this Civil Revision is allowed. The impugned order is set aside. Learned Additional District Judge, Bilaspur is directed to dispose of the application under Order 7 Rule 11 of C.P.C. on merit after giving opportunity of hearing to the parties.

Sd/-
Dilip Raosaheb Deshmukh
Judge

Kvr